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9 **UNITED STATES DISTRICT COURT**10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**11
12 **TICKETMASTER, L.L.C., a**
13 **Virginia limited liability company,**14 **Plaintiff,**15 **v.**16 **RMG TECHNOLOGIES, INC., a**
17 **Delaware corporation and DOES 1**
18 **through 10, inclusive,**19 **Defendants.**

Case No. CJ 07-2534 ABC(JCx)

DISCOVERY MOTION**JOINT STIPULATION
REGARDING DEFENDANT'S
MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**Judge: Jacqueline Chooljian
Hearing Date: April 22, 2008
Hearing Time: 1:30 p.m.
Location: Courtroom 20,
312 N. Spring St.,
Los Angeles, CA 90012

20 Pre-trial Conference: 9/15/08

21 Trial: 10/2/08

22 Discovery cutoff: 5/23/08

23 **RMG'S INTRODUCTORY STATEMENT**24 Ticketmaster, LLC (hereinafter "Ticketmaster"), the Plaintiff in this matter,
25 delivered a Joint Stipulation Regarding Motion to Compel on RMG
26 TECHNOLOGIES, INC. ("RMG"), after regular office hours on March 12, 2008.

27 On March 20, 2000 at 12:00 a.m., RMG delivered its portion for the joint

1 stipulation on motion to compel. LR 37-2.1 states in relevant part, “[t]he
2 stipulation shall contain *all issues in dispute* and, with respect to each such issue,
3 the contentions and points and authorities of each party.” Accordingly, RMG
4 included in its portion of the stipulation the fact that Ticketmaster has not produced
5 a single document in this matter, that it has made frivolous objections, and it set
6 forth all of the issues which it had pursuant to each request which Ticketmaster
7 either failed to properly respond or which Ticketmaster failed to produce
8 documents.

9 After receiving RMG’s portion, Ticketmaster deleted the RMG’s portion
10 which dealt with Ticketmaster’s failure to comply with discovery requests, claiming
11 that while the motion is based on a joint stipulation, it is not a “joint motion.”
12 RMG’s counsel stated that the Local Rules specifically require the joint stipulation
13 cover all discovery issues in dispute between the parties and that Ticketmaster did
14 not have permission to delete any of RMG’s portions of the joint stipulation.
15 Moreover, RMG’s counsel stated that for the sake of judicial economy, and to save
16 the Court and the parties from having to handle two different motions on two
17 different days one week apart, that the discovery motion should be deemed a joint
18 motion to compel. Ticketmaster’s attorney stated that Ticketmaster did not want to
19 do a joint motion.

20 Clearly, Ticketmaster would rather the Court resolve its discovery issues
21 without having to confront the fact that it failed to produce a single document in
22 this matter being before the Court. In order to simply move the case forward, RMG
23 has signed the joint stipulation of Ticketmaster, even though it has deleted much of
24 RMG’s portion, and RMG will ask the honorable court to simply consolidate all of
25 the parties’ issues in one hearing.

26 Ticketmaster has asserted frivolous objections and employed dilatory tactics
27 all to deprive RMG of its right to defend itself in this action. Pointedly, pursuant to
28 Ticketmaster’s Request for Production of Documents dated October 15, 2007 and

1 the expedited discovery order of the court dated November 9, 2007 RMG has
2 provided to Ticketmaster significant and proprietary documents related to its
3 software products, including, the source code that drives its software product.

4 Nevertheless, Plaintiff has refused to provide any documents whatsoever to
5 RMG notwithstanding the fact that RMG propounded its Request for Production on
6 December 7, 2007. What makes Ticketmaster's actions even more egregious, is
7 that it specifically requested an extension of time with which to respond to RMG's
8 discovery request, only to fail to produce documents. As of the date of RMG's
9 preparation of this stipulation, RMG still had not received one single piece of paper
10 which was responsive to any of its document requests.

11 Documents which have been withheld by Ticketmaster are highly relevant to
12 RMG's defenses in this matter. Specifically, Ticketmaster has claimed that it
13 sustained damages in the form of increased costs of internet security. In response to
14 this allegation, RMG requested documents concerning Ticketmaster's convenience
15 charges. RMG contends that these documents would show whether Ticketmaster
16 has actually passed off the costs of internet security to its customers, thereby,
17 negating any such damages. Notwithstanding the obvious relevance, and clear need
18 for this information, Ticketmaster refuses to produce any such documents under
19 any condition. At the joint meet and confer of counsel on March 5, 2008 regarding
20 both parties' issues concerning discovery, Ticketmaster's attorneys told RMG's
21 counsel that RMG would need to make a motion to compel in order to obtain this
22 information. When RMG's counsel asked Ticketmaster's counsel why it was
23 refusing to produce documents which clearly are relevant to the matter,
24 Ticketmaster's attorney claimed that he did not have authority to commit to
25 producing the information.

26 Ticketmaster has failed to produce any documents which support its loss of
27 goodwill claim, even though same have been requested. When RMG's counsel
28 confronted Ticketmaster's counsel with the fact that said documents are relevant to

1 disproving Ticketmaster's claims, Ticketmaster's counsel agreed that they were
2 relevant, yet refused to produce them.

3 On March 5, 2008, when counsel for Ticketmaster and RMG met and
4 conferred regarding *both parties* in discovery responses, Ticketmaster's counsel
5 requested that RMG provide further discovery responses by March 7, 2008. Upon
6 RMG's counsel's inquiry as to when Ticketmaster would provide supplemental
7 responses, Ticketmaster's counsel stated that Ticketmaster would be unable to
8 provide a further response for at least 2 to 3 weeks, maybe longer; he refused to
9 confirm any date for further responses or document production. RMG's counsel
10 stated they would not be able to provide responses by March 7, 2008, as RMG's
11 counsel had an appellate brief due in another matter on March 14, 2008, and a jury
12 trial scheduled to begin on March 17, 2008. RMG's counsel suggested that the
13 parties decide on another due date for both of their further responses.
14 Ticketmaster's counsel refused to commit to a date for his client to provide further
15 responses. Accordingly, the parties left the issue open. On March 12, 2008,
16 without ever communicating with RMG's counsel about any further responses
17 which it had pursuant to the meet and confer, Ticketmaster delivered its portion of
18 a joint stipulation to RMG's counsel.

19 Based upon the foregoing, it is respectfully submitted that it is Ticketmaster
20 who must be compelled to provide another response to RMG's document requests,
21 and to immediately produce documents.

22 **TICKETMASTER'S INTRODUCTORY STATEMENT**

23 Ticketmaster has always been prepared to provide many of the documents at
24 issue in this motion upon entry of a protective order. Indeed, Ticketmaster asked
25 RMG to stipulate to a protective order that is virtually identical to the protective
26 order that was entered in a related case – *Ticketmaster L.L.C. v. Designer Tickets*
27 *and Tours, Inc., et al.*, C.D.Cal., Case No. CV 07-1092 ABC (JCx). RMG refused
28 to stipulate, as a result of which Ticketmaster has filed a motion for entry of a

1 protective order, which will be heard concurrently herewith. Thus, a substantial
2 portion of this motion is unnecessary and could have been avoided.

3 As to the rest, many of the items in dispute relate only to RMG's antitrust
4 counterclaims, which were recently dismissed. Although RMG was granted leave
5 to amend its counterclaims, the Court was skeptical RMG could plead a viable
6 antitrust counterclaim. Thus, Ticketmaster believes it would be premature to be
7 subjected to extensive discovery regarding claims that are likely to be dismissed (if,
8 indeed, RMG even bothers to file amended counterclaims at all). As to those
9 requests in dispute that do not relate solely to the antitrust counterclaims, the
10 defects are specific to the particular requests and are thus addressed where
11 appropriate below.

12 Finally, Ticketmaster will not belabor the Court with a response to RMG's
13 irrelevant discussion of whether its motion to compel should have been shoe-
14 horned into Ticketmaster's separate motion to compel, other than to note that
15 RMG's attempt to do so was improper.

16 **A. Ticketmaster's Claims.**

17 Ticketmaster ("Ticketmaster") distributes tickets for live entertainment
18 events to the public through its "www.ticketmaster.com" website. (First Amended
19 Complaint ("FAC"), ¶ 3.) The ability for customers to conveniently obtain tickets
20 is integral to Ticketmaster's business. (*See* Declaration of Kevin McLain, filed in
21 support of Plaintiff's Motion For Preliminary Injunction ("McLain Decl."), at ¶¶ 2,
22 6, 36, attached to the Declaration of Raaqim Knight ("Knight Decl."), filed
23 concurrently herewith, as Exhibit ("Exh.") A.) Accordingly, Ticketmaster makes
24 significant efforts to ensure that the largest possible number of consumers have
25 access to tickets. (McLain Decl., ¶ 7.)

26 Because demand often exceeds the supply of tickets available through the
27 website, Ticketmaster has developed and employs various means to regulate and
28 ensure consumers' fair access to tickets. (*Id.*, ¶¶ 6, 7, 8, 22.) These measures limit

1 the way consumers may use the website and are necessary to maintain
2 Ticketmaster's reputation of being the most reliable source of event tickets. (*Id.*)

3 Ticketmaster alleges that RMG developed and sold automated devices whose
4 sole purpose was to enable its customers to circumvent Ticketmaster's security
5 measures and unfairly procure large quantities of tickets at a speed legitimate
6 consumers could not match, in violation of the website's Terms of Use. (FAC, ¶ 4.)
7 These automated devices also circumvented TM's access control and copy
8 protection systems. (McLain Decl., ¶ 18.)

9 Ticketmaster alleges claims against RMG for copyright infringement,
10 violations of the Digital Millennium Copyright Act (17 U.S.C. § 1201), the
11 Computer Fraud and Abuse Act (18 U.S.C. § 1030), California Penal Code § 502 *et*
12 *seq.* and RICO statutes, breach of contract, intentional interference with contractual
13 relations, inducing breach of contract, and fraud. Ticketmaster seeks, among other
14 relief, damages and a permanent injunction.

15 Earlier in this case, Ticketmaster moved for a preliminary injunction, which
16 was granted on October 16, 2007. The injunction enjoins RMG from creating,
17 selling, facilitating the use of, or using "computer programs or other automatic
18 devices to circumvent the technological copy protection systems in Ticketmaster's
19 website," or otherwise violating ticketmaster.com's terms of use. (Order Granting
20 Plaintiff's Motion for Preliminary Injunction ("Injunction"), attached to the Knight
21 Decl. as Exh. C.)

22 **B. RMG's Counterclaims.**

23 RMG reflexively asserted counterclaims against Ticketmaster for antitrust
24 violation, misuse of copyright, and violations of the Computer Fraud and Abuse
25 Act and California Penal Code Section 502. The Court granted Ticketmaster's
26 motion to dismiss the antitrust and copyright counterclaims. (*See* Order Granting
27 Motion to Dismiss ("12(b)(6) Order"), attached to the Knight Decl. as Exh. B.)
28

1 **C. RMG's Discovery Requests and Ticketmaster's Responses.**

2 On December 7, 2007, RMG served its First Set of Document Requests,
3 which contained 66 requests. Many of the requests seek highly sensitive
4 technological information and financial information. Many requests also seek
5 irrelevant information and appear to be intended only to harass Ticketmaster,
6 increase the costs of litigation, and/or permit a fishing expedition into various
7 aspects of Ticketmaster's business operations. Moreover, many of the requests are
8 directed solely to RMG's now-dismissed counterclaims.

9 Ticketmaster agreed to produce documents in response to those requests that
10 were proper, upon entry of a protective order. RMG refused to stipulate to
11 Ticketmaster's proposed order, even though a virtually identical order had been
12 entered in a related case – *Ticketmaster L.L.C. v. Designer Tickets and Tours, Inc.,*
13 *et al.*, C.D.Cal., Case No. CV 07-1092 ABC (JCx) – as a result of which
14 Ticketmaster has had to move for entry of a protective order.

15
16 **II.**
17 **JOINT SPECIFICATION OF ISSUES IN DISPUTE**

18 **A. TICKETMASTER'S UNFOUNDED OBJECTIONS AND FAILURE**
19 **TO PRODUCE DOCUMENTS CONCERNING ITS CONVENIENCE**
20 **CHARGES.**

21 **1. Request for Production Nos. 1 through 3**

22 **REQUEST FOR PRODUCTION NO. 1:**

23 Any and all DOCUMENTS which refer, reflect or relate to YOUR
24 method of determining convenience charges for tickets sold on
25 ticketmaster.com.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

27 Plaintiff incorporates by reference each and every one of the General
28 Responses and Objections as though fully set forth herein. Plaintiff
further objects to this request because it seeks information neither
relevant to the subject matter of this litigation nor reasonably
calculated to lead to the discovery of admissible evidence. Plaintiff
further objects to this request on the ground that it is vague and
ambiguous, including but not limited to the term "method". Plaintiff
further objects to this request to the extent it lacks foundation. Plaintiff
further objects to this request on the ground that it is compound,

1 overbroad, unduly burdensome and oppressive. Plaintiff further objects
 2 to this request on the ground that it seeks the production of documents
 3 containing confidential, sensitive, proprietary, commercial, business
 4 and financial information. Plaintiff further objects to this request to the
 5 extent that it seeks documents protected by attorney-client privilege or
 6 the work-product doctrine.

7
 8 **REQUEST FOR PRODUCTION NO.2:**

Any and all DOCUMENTS which refer, reflect or relate to all factors
 considered by YOU in determining convenience charges for tickets
 purchased on ticketmaster.com.

9
 10 **RESPONSE TO REQUEST FOR PRODUCTION NO.2:**

Plaintiff incorporates by reference each and every one of the General
 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request because it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request on the ground that it is vague and
 ambiguous, including but not limited to the term "considered".
 Plaintiff further objects to this request to the extent it lacks foundation.
 Plaintiff further objects to this request on the ground that it is
 compound, overbroad, unduly burdensome and oppressive. Plaintiff
 further objects to this request on the ground that it seeks the production
 of documents containing confidential, sensitive, proprietary,
 commercial, business and financial information. Plaintiff further
 objects to this request to the extent that it seeks documents protected
 by attorney-client privilege or the work-product doctrine.

13
 14
 15
 16
 17 **REQUEST FOR PRODUCTION NO.3:**

Any and all DOCUMENTS which refer, reflect or relate to the identity
 of all PERSONS involved in the decision making process of
 determining convenience charges for tickets purchased on
 ticketmaster.com.

18
 19
 20 **RESPONSE TO REQUEST FOR PRODUCTION NO.3:**

Plaintiff incorporates by reference each and every one of the General
 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request because it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request on the ground that it is vague and
 ambiguous, including but not limited to the phrase "decision making
 process". Plaintiff further objects to this request to the extent it lacks
 foundation. Plaintiff further objects to this request on the ground that it
 is compound, overbroad, unduly burdensome and oppressive. Plaintiff
 further objects to this request on the ground that it seeks the production
 of documents containing confidential, sensitive, proprietary,
 commercial, business and financial information. Plaintiff further
 objects to this request to the extent that it seeks documents protected
 by attorney- client privilege or the work-product doctrine.

REQUEST FOR PRODUCTION NO. 6:

Any and all DOCUMENTS which refer, reflect or relate to any research which YOU conducted in determining convenience charges for tickets sold on ticketmaster.com

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is vague and ambiguous, including but not limited to the term "research". Plaintiff further objects to this request to the extent it lacks foundation. Plaintiff further objects to this request on the ground that it is compound, overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

a. RMG's Contentions and Points and Authorities

Pursuant to FRCP 34(a)-(b), a party is obliged to produce all specified relevant and non-privileged documents or other things in its possession, custody or control on the date and time specified in the Request for Production of Documents. On December 31, 2007, RMG personally served its request for Production of Documents upon Ticketmaster's counsel. RMG requested that Ticketmaster "produce and permit the inspection and photocopying of documents and tangible things at the office of Coggan & Tarlow, 1925 Century Park East, Suite 2320, Los Angeles, California within 30 days of the service of the Request for Production of Documents. To date, Ticketmaster has not produced a single document responsive to any of RMG's document requests.

Ticketmaster has sued RMG for Violation of the Computer Fraud and Abuse Act, Violation of California Penal Code § 502, Fraud, Aiding and Abetting Fraud, Breach of Contract, Inducing Breach of Contract, Intentional Interference with Contract, and Violation of Civil RICO. All of these claims require Ticketmaster to prove the element of damages. *See Lim v. The.TV International* (2002) 99 Cal.

1 App.4th 684, 694. *See also Fisher v. Paul Revere insurance Group*, (C.A.9
 2 Cal.)55 Fed. Appx., 414). (Damages are an element of fraud) *See Computer*
 3 *Fraud and Abuse Act* 18 U.S.C. 1030. (Requires \$5,000.00 in damage to a
 4 computer in order to sue civilly.) *See Careau & Co. v. Security Pacific Credit, Inc.*,
 5 (1990) 222 Cal. App.3d 1371, 1388. (Plaintiff must plead and prove damages in
 6 order to prevail on a cause of action for breach of contract). *See also Pacific Gas &*
 7 *Electric v. Bear Stearns & Company* (1990) 50 Cal. 3d 1118, 1126. *See*
 8 *Contemporary Investments, Inc. v. Safeco Title Insurance Co.*, (1983) 145 Cal.
 9 App. 3d 999, 1002. (Plaintiff must plead and prove the element of damages to
 10 prevail on causes of action for inducing breach of contract or intentional
 11 interference with contract.)

12 In ¶ 45 of Ticketmaster's First Amended Complaint—which is incorporated
 13 into the damages' paragraphs in nine of Ticketmaster's eleven claims—
 14 Ticketmaster asserts that it has been damaged by the “increased costs of data
 15 storage, troubleshooting and system maintenance.”

16 In light of Ticketmaster's claim that it is damaged by paying costs associated
 17 with data storage, troubleshooting, and system maintenance, RMG propounded
 18 Request Nos. 1-3 and 6, to determine whether Ticketmaster has actually passed
 19 those costs on to its customers. Pointedly, if Ticketmaster did, it cannot claim that
 20 those costs as damages, because Ticketmaster would be whole. Further, if
 21 Ticketmaster has claimed damages for amounts that it has factored into its
 22 convenience charges, then Ticketmaster could not seek those costs for damages,
 23 because the convenience charges made it whole.

24 Moreover, Ticketmaster admitted in its response to RMG's Request for
 25 Production of Documents that “Convenience charges are based, among other
 26 things, on Plaintiff's cost of doing business, which is in turn affected by the cost of,
 27 among other things, Plaintiff's attempt to maintain a secure website.” Thus, the
 28 documents requested in Requests 1-3 and 6, are relevant to the issue of how much

1 Ticketmaster has spent to maintain a secure Web site, which in this matter appears
2 to be an element of their damages claim.

3 Based upon the foregoing, these requests are relevant to the matters set forth
4 in this case, and Ticketmaster should produce them forthwith.

5 **b. TM's Contentions and Points and Authorities.**

6 The documents sought by Request Nos. 1, 2, 3 and 6 are irrelevant, and thus
7 not discoverable under Rule 26(b)(1). RMG appears to be arguing that
8 Ticketmaster cannot have been damaged if Ticketmaster could somehow manage to
9 pass on to its own customers the incremental operating costs caused by RMG's
10 misconduct. RMG cites no authority for this novel "offset" theory, nor could it.
11 Every dollar Ticketmaster spends in efforts to prevent—or deal with the fall-out
12 of—RMG's misconduct is a dollar that was not spent on some other product or
13 service, and the harm to Ticketmaster is the same whether or not it could increase,
14 or did increase, its convenience charges.¹

15 Moreover, the convenience charges charged by Ticketmaster are governed by
16 contracts between Ticketmaster and its clients. Determining the amount of those
17 charges involves business negotiations and a host of other factors that have nothing
18 whatsoever to do the with the claims in this case.

19 **c. Proposed Resolutions During the Conference of Counsel.**

20 **(1) RMG's Proposed Resolution.**

21 RMG's counsel asked Ticketmaster if the documents responsive to Request
22 Nos. 1-3 and 6 were being withheld based upon privilege, and whether
23 Ticketmaster intended on producing them upon the execution of a protective order.
24 Ticketmaster's counsel stated that Ticketmaster did not intend on producing said
25 documents at any time, even though he acknowledged that they were probably
26

27 ¹ RMG's argument is tantamount to a shoplifter arguing that he is not liable to
28 the store for ensuing security enhancements if the store paid for those
enhancements by raising its prices.

relevant to RMG's defenses in this matter. RMG's counsel proposed that since these requested documents are clearly relevant, that they be produced, forthwith, without objection. Ticketmaster's counsel told RMG's counsel that these were magistrate issues that would need to be resolved on a motion to compel.

(2) Ticketmaster's Proposed Resolution.

RMG's counsel did not ask during the mandatory conference of counsel whether Ticketmaster intended to produce any document upon the execution of a protective order. (Knight Decl., ¶ 9.) Instead, counsel for RMG stated that RMG's principals were angered by the adverse rulings in this case and would not agree to enter into any protective order. (*Id.*) Nor did counsel for Ticketmaster ever suggest that the documents in question were relevant, because they are not. (*Id.*) Instead, as RMG acknowledged in its portion of the Joint Stipulation Regarding Plaintiff's Motion to Compel, counsel for Ticketmaster stated that these documents were not relevant and would not be produced. (*Id.*, Ex. F.)

B. TICKETMASTER'S UNFOUNDED OBJECTIONS AND FAILURE TO PRODUCE DOCUMENTS CONCERNING LOST GOODWILL, NO. 12.

REQUEST FOR PRODUCTION NO. 12

Any and all DOCUMENTS which refer, reflect or relate to any claim that YOU have made for loss of goodwill from January 1, 2002 to present, including, but not limited to corporate tax returns, financial statements and profit and loss statements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it is vague, ambiguous and unintelligible, including but not limited to the phrase "any claim that YOU have made for loss of goodwill." Plaintiff further objects to this request to the extent it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

1 **a. RMG's Contentions and Points and Authorities.**

2 Pursuant to FRCP 34(a)-(b), a party is obliged to produce all specified
3 relevant and non-privileged documents or other things in its possession, custody and
4 control on the date and time specified in a Request for Production of Documents.

5 Ticketmaster has claimed in both its First Amended Complaint and the
6 Motion for Preliminary Injunction, that it has sustained loss of goodwill based upon
7 the alleged acts of RMG. RMG therefore, has requested all records reflecting any
8 claims of loss of goodwill, as the records are relevant to Ticketmaster's loss of
9 goodwill damages claim. Ticketmaster has refused to produce any records
10 referring, reflecting, or relating to any loss of goodwill claims. None of its
11 objections have any merit. Pointedly, the phrase "any claim that YOU have made
12 for loss of goodwill" is very direct and simple English. Secondly, Ticketmaster's
13 objection that this request is overbroad, unduly burdensome and oppressive is also
14 without merit, as said requests are narrowly drawn. Nevertheless, and assuming,
15 *arguendo*, that the request are overly broad, Ticketmaster was required to respond
16 to the non-objectionable portion of each such request and to identify the sources of
17 responsive documents not reasonably accessible. See Fed.R.Civ.P. 34(b). Finally,
18 assuming Ticketmaster's objection—that this request is unduly burdensome and
19 oppressive— is meritorious, then the only logical inference that can be drawn is
20 that Ticketmaster has not produced these documents to determine its own claim for
21 a loss of goodwill. Thus, Ticketmaster is conceding that it filed its claim for a loss
22 of goodwill without any documents to support this claim.

23 **b. Ticketmaster's Contentions and Points and Authorities.**

24 What Request No. 12 seeks is all documents relating to any claim for loss of
25 goodwill, regardless of whether the claim relates to RMG or the issues in this case.
26 The Request is overbroad and seeks irrelevant material, because the only loss of
27 goodwill relevant here is any loss caused by RMG's unlawful conduct, which only
28 came to light last year.

1 Nor is the notion of lost goodwill limited to any technical use of that term as
2 it might appear in financial documents. The harm to goodwill from RMG's
3 misconduct includes negative stories about Ticketmaster in the media, dissatisfied
4 customers and dissatisfied clients. That harm, which is both tangible and
5 intangible, is not necessarily encapsulated by any entry for goodwill in a balance
6 sheet.

7 In any event, and contrary to RMG's suggestion, Ticketmaster's objection to
8 this request is certainly not an admission that it lacks documents to support its loss
9 of goodwill. Rather, the request as phrased is defective, and appears to be primarily
10 an attempt to obtain sensitive financial data, including tax returns—the production
11 of which is disfavored (*see* 26 U.S.C. § 6103)—as a fishing expedition.

12 **c. Proposed Resolutions During the Conference of Counsel.**

13 **(1) RMG's Proposed Resolution.**

14 During the meet and confer, RMG's counsel explained that Ticketmaster is
15 claiming it lost goodwill, and used that as a basis to obtain a preliminary injunction.
16 Therefore, RMG sought documents such as tax records, financial statements, etc
17 reflecting a loss of goodwill. RMG is entitled to those documents in order to
18 evaluate what Ticketmaster believes its goodwill was worth. If Ticketmaster did
19 not claim any loss of goodwill, then RMG is entitled to use that information to
20 show that the claim is unmeritorious. Ticketmaster's counsel stated "I see your
21 point" and offered to go to his client and see if his client was willing to supplement
22 the response. Further, Ticketmaster's counsel stated that he would contact RMG's
23 counsel soon thereafter and tell him whether Ticketmaster agreed to supplement the
24 response. However, Ticketmaster served this stipulation prior to notifying RMG's
25 counsel as to whether it would supplement this response.

26 **(2) Ticketmaster's Proposed Resolution.**

27 During the mandatory conference of counsel, Ticketmaster's counsel
28 explained that the requested documents were irrelevant and highly sensitive.

(Knight Decl., ¶ 10.) RMG's counsel stated that not claiming a loss of goodwill on its tax returns would constitute an admission by Ticketmaster that it had not lost any goodwill. (*Id.*) While indicating that he understood RMG's logic, Ticketmaster's counsel reiterated that the documents in question do not appear to be relevant, that they are highly confidential, and that he was skeptical whether a corporation's tax returns would indicate lost goodwill in any event. (*Id.*)

In an attempt to compromise, Ticketmaster's counsel informed RMG's counsel that he would research the issue further, and that Ticketmaster would supplement its response if the law so required. Having done so, Ticketmaster continues to believe that its objections are valid. (*Id.*)

III. **TICKETMASTER'S UNFOUNDED OBJECTIONS AND FAILURE TO PRODUCE DOCUMENTS CONCERNING ITS CONVENIENCE CHARGES.**

REQUEST FOR PRODUCTION NO. 33:

Any and all DOCUMENTS which refer, reflect or relate to any PERSON who YOU have employed, either as an employee or an independent contractor, in an attempt to stop the use of spiders, robots, bots, automated devices or automated processes on the ticketmaster.com website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request on the ground that it is vague and ambiguous, including but not limited to the phrase "employed . . . in an attempt". Plaintiff further objects to this request to the extent that it lacks foundation. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

A. RMG's Contentions and Points and Authorities

In this request, RMG simply asks for all documents which reflect the witnesses who have knowledge of Ticketmaster's attempt to stop the use of spiders,

1 robots, bots, automated devices or automated processes on its Web site.
 2 Ticketmaster's objection that this request is vague, ambiguous or overbroad, unduly
 3 burdensome or oppressive, or that it calls for any confidential information is simply
 4 baseless, as this request would lead to the identity of witnesses. In fact, these are
 5 precisely the types of documents which should have been provided with initial
 6 disclosures. Pointedly, Rule 26(1)(A) specifically requires Ticketmaster to identify
 7 the name, address and telephone number of each individual likely to have
 8 discoverable information that Ticketmaster may use to support its claims and
 9 defenses. For Ticketmaster to withhold documents which simply refer, reflect or
 10 relate to these witnesses is improper and in bad faith.

11 **B. Ticketmaster's Contentions and Points and Authorities**

12 Ticketmaster has provided the following supplemental response to this
 13 request: "Following entry of a protective order, Plaintiff will make available for
 14 inspection all relevant, non-privileged documents relating to attempts by
 15 Ticketmaster's employees or independent contractors working on its behalf to stop
 16 the use of spiders, robots, bots, automated devices or automated processes on the
 17 ticketmaster.com website."

18 **C. PROPOSED RESOLUTIONS DURING THE CONFERENCE OF**
 19 **COUNSEL.**

20 **1. RMG's Proposed Resolution.**

21 During the mandatory meeting of counsel, Ticketmaster's counsel stated that
 22 Ticketmaster would produce the documents requested in number 33. However, to
 23 date, no such document has been produced.

24 **2. Ticketmaster's Proposed Resolution.**

25 During the mandatory meeting of counsel, Ticketmaster's counsel informed
 26 counsel for RMG that Ticketmaster would produce responsive documents subject to
 27 a protective order because they are confidential. (Knight Decl., ¶ 11.) RMG
 28

1 refused to stipulate to a protective order, as a result of which Ticketmaster has
 2 moved for entry of a protective order. (*Id.*, ¶¶ 5, 6, 8.)

3 **D. TICKETMASTER'S REFUSAL TO PRODUCE DOCUMENTS**
 4 **RESPONSIVE TO REQUEST NUMBERS 46-48**

5 **REQUEST FOR PRODUCTION NO. 46:**

6 Any and all DOCUMENTS which refer, reflect or relate to all tickets
 7 to the "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour"
 8 which were sold on TicketExchange portion of the ticketmaster.com
 9 website from January 1, 2007 to present.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

11 Plaintiff incorporates by reference each and every one of the General
 12 Responses and Objections as though fully set forth herein. Plaintiff
 13 further objects to this request because it seeks information neither
 14 relevant to the subject matter of this litigation nor reasonably
 15 calculated to lead to the discovery of admissible evidence. Plaintiff
 16 further objects to this request on the ground that it is overbroad, unduly
 17 burdensome and oppressive. Plaintiff further objects to this request on
 18 the ground that it seeks the production of documents containing
 19 confidential, sensitive, proprietary, commercial, business and financial
 20 information. Plaintiff further objects to this request to the extent that it
 21 seeks documents protected by attorney- client privilege or the work-
 22 product doctrine. Plaintiff further objects to this request on the grounds
 23 that it is premature, given Plaintiff's pending motion to dismiss
 24 Defendant's counterclaim.

25 **REQUEST FOR PRODUCTION NO. 47:**

26 Any and all DOCUMENTS which refer, reflect or relate to all
 27 convenience charges YOU were paid as a result of sales on the
 28 TicketExchange portion of the ticketmaster.com website for the
 "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour" from
 January 1, 2007 to present.

29 **RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

30 Plaintiff incorporates by reference each and every one of the General
 31 Responses and Objections as though fully set forth herein. Plaintiff
 32 further objects to this request because it seeks information neither
 33 relevant to the subject matter of this litigation nor reasonably
 34 calculated to lead to the discovery of admissible evidence. Plaintiff
 35 further objects to this request on the ground that it is overbroad, unduly
 36 burdensome and oppressive. Plaintiff further objects to this request on
 37 the ground that it seeks the production of documents containing
 38 confidential, sensitive, proprietary, commercial, business and financial
 information. Plaintiff further objects to this request to the extent that it
 seeks documents protected by attorney- client privilege or the work-
 product doctrine. Plaintiff further objects to this request on the grounds
 that it is premature, given Plaintiff's pending motion to dismiss
 Defendant's counterclaim.

REQUEST FOR PRODUCTION NO. 48:

Any and all DOCUMENTS which refer, reflect or relate to any agreements you had with any PERSON to sell tickets to the "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour."

RESPONSE TO REQUEST FOR PRODUCTION NO. 48:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

1. RMG's Contentions and Points and Authorities.

Pursuant to FRCP 34(a)-(b), a party is obliged to produce all specified relevant and non-privileged documents or other things in its possession, custody and control on the date and time specified in a Request for Production of Documents.

In the MPI, Ticketmaster, through the declaration of its employee Kevin McLain, argued that Ticketmaster was losing goodwill due to the inability of children and their parents to obtain tickets to "Hannah Montana" events because of RMG's software programs. Mr. McLain stated that "[m]oney alone cannot compensate Ticketmaster for the harm caused by children who have been disappointed and parents who are angry with Ticketmaster when tickets are not available. Such people may never be Ticketmaster customers, and may develop negative impressions about Ticketmaster that last for years." In the declaration of its attorney Mark S. Lee, he attaches several articles regarding the unavailability of Hannah Montana tickets.

By submitting this evidence to the Court, Ticketmaster opened the door to discovery of information regarding Hannah Montana. Pointedly, Ticketmaster opened the door to whether or not RMG's software programs were actually the

1 cause of the lack of tickets to this show. Specifically, RMG has the right to
2 determine whether other factors caused the alleged loss of goodwill, including, but
3 not limited to, the amount of tickets that were available to each show, agreements
4 between Ticketmaster and the artist, her promoters, or venues regarding the amount
5 of tickets Ticketmaster was allowed to hold back in order to sell them at a premium,
6 above the "face price," on the auction portion or TicketExchange portions of
7 Ticketmaster's Web site, or whether Ticketmaster encouraged its Web site users to
8 purchase tickets for the show so it can sell them on the TicketExchange portion of
9 its Web site.

10 Moreover, if a contributing factor to Ticketmaster's alleged lost goodwill
11 was due to Ticketmaster withholding tickets, or selling tickets at a significant
12 markup on its auction portion, or TicketExchange portion of its Web site, RMG
13 would be entitled to a set off. Specifically, RMG would be entitled to a set-off from
14 the amount of any lost goodwill damages it may be liable to pay, from the amounts
15 that Ticketmaster was paid in the form of convenience charges or ticket markups.
16 Thus, this requested information is highly relevant to RMG's damages defense.

17 **2. Ticketmaster's Contentions and Points and Authorities.**

18 Ticketmaster is willing to produce, and in fact has produced, documents
19 relating to the Hannah Montana incident. However, these requests go far beyond
20 what conceivably could be relevant.

21 Request Nos. 46 and 47 relate solely to Ticketmaster's TicketExchange
22 feature, which enables ticketholders to resell tickets on ticketmaster.com and has no
23 relevance to Ticketmaster's claim that RMG's automated devices are disrupting the
24 initial sale of tickets on ticketmaster.com. RMG's speculation that Ticketmaster
25 held back tickets for Hannah Montana so that they could be sold on
26 TicketExchange provides no basis for discovery. With limited exceptions, tickets
27 are sold on TicketExchange after they have already been purchased in the initial
28 sale, and it is only the initial sale that is at issue here. Indeed, the Court explained

1 this distinction in its order granting Ticketmaster's motion to dismiss RMG's
2 antitrust counterclaims. (12(b)(6) Order, pp. 6:19-12:11.)

3 RMG's argument that the requests seek documents relating to other factors
4 that may have caused Ticketmaster to lose goodwill is equally specious. The issue
5 here is that RMG's automated devices deprived legitimate consumers of the
6 opportunity to pay the face price for a ticket, which harmed Ticketmaster's relations
7 with its customers and clients. Whether anyone other than RMG caused
8 Ticketmaster harm or loss of goodwill does not affect RMG's liability for the harm
9 that it has caused.

10 Finally, the documents requested in Request No. 48 are irrelevant. It is
11 uncontested that tickets for the Hannah Montana concert were made available for
12 sale through Ticketmaster. Plaintiff has provided no reason for needing to see the
13 highly confidential contracts between Ticketmaster and its many clients across the
14 country where the Hannah Montana concerts occurred.

15 **3. Proposed Resolution During Conference of Counsel**

16 **a. RMG's Proposed Resolution.**

17 RMG's counsel asked Ticketmaster if the documents responsive to Request
18 Nos. 46-48 were being withheld based upon privilege, and whether Ticketmaster
19 intended on producing them upon the execution of a protective order.
20 Ticketmaster's counsel stated that Ticketmaster did not intend on producing said
21 documents at any time. RMG's counsel proposed that since these requested
22 documents are clearly relevant, that they be produced, forthwith, without objection.
23 Ticketmaster's counsel told RMG's counsel "this is a magistrate issue" to be dealt
24 with on a motion to compel.

25 **b. TM's Proposed Resolution.**

26 During the mandatory meeting of counsel, counsel for RMG admitted that
27 these requests related to RMG's antitrust counterclaims. (Knight Decl., ¶ 12.)
28 Ticketmaster's counsel stated that these requests were premature because the Court

1 had not yet ruled on Ticketmaster's motion to dismiss RMG's counterclaims (it has
 2 since been granted). (*Id.*) Counsel for RMG countered that even if its
 3 counterclaims were ultimately dismissed, RMG still asserted antitrust violations as
 4 an affirmative defense. (*Id.*) Ticketmaster's counsel responded that any affirmative
 5 defense predicated on antitrust violations would suffer the same infirmities as
 6 RMG's counterclaims, and thus the same basis for Ticketmaster's objections would
 7 apply. (*Id.*)

8 **E. TICKETMASTER'S REFUSAL TO PRODUCE DOCUMENTS**
 9 **PURSUANT TO RMG REQUEST NUMBERS 51-66.**

10 **REQUEST FOR PRODUCTION NO. 49:**

11 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 12 purchased by or on behalf of Thomas J. Prior on the ticketmaster.com
 13 website from February 1, 2007 to present.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

15 Plaintiff incorporates by reference each and every one of the General
 16 Responses and Objections as though fully set forth herein. Plaintiff
 17 further objects to this request to the extent that it seeks information
 18 neither relevant to the subject matter of this litigation nor reasonably
 19 calculated to lead to the discovery of admissible evidence. Plaintiff
 20 further objects to this request on the ground that it is overbroad, unduly
 21 burdensome and oppressive. Plaintiff further objects to this request on
 22 the ground that it seeks the production of documents containing
 23 confidential, sensitive, proprietary, commercial, business and financial
 24 information. Plaintiff further objects to this request on the ground that
 25 it violates the right to privacy of a third party. Plaintiff further objects
 26 to this request to the extent that it seeks documents protected by
 27 attorney-client privilege or the work-product doctrine. Subject to and
 28 without waiving the foregoing objections, Plaintiff responds as
 follows: Plaintiff will make all relevant, non-privileged responsive
 documents available for inspection under mutually agreeable terms,
 following entry of a mutually agreeable protective order.

23 **REQUEST FOR PRODUCTION NO. 50:**

24 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 25 purchased by or on behalf of Gary Charles Bonner on the
 26 ticketmaster.com website from February 1, 2007 to present.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

27 Plaintiff incorporates by reference each and every one of the General
 28 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request to the extent that it seeks information
 neither relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff

1 further objects to this request on the ground that it is overbroad, unduly
 2 burdensome and oppressive. Plaintiff further objects to this request on
 3 the ground that it seeks the production of documents containing
 4 confidential, sensitive, proprietary, commercial, business and financial
 5 information. Plaintiff further objects to this request on the ground that
 6 it violates the right to privacy of a third party. Plaintiff further objects
 7 to this request to the extent that it seeks documents protected by
 8 attorney-client privilege or the work-product doctrine. Subject to and
 9 without waiving the foregoing objections, Plaintiff responds as
 10 follows: Plaintiff will make all relevant, non-privileged responsive
 11 documents available for inspection under mutually agreeable terms,
 12 following entry of a mutually agreeable protective order.

13 **REQUEST FOR PRODUCTION NO. 51:**

14 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 15 purchased by or on behalf of Designer Tickets on the ticketmaster.com
 16 website from February 1, 2007 to present.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

18 Plaintiff incorporates by reference each and every one of the General
 19 Responses and Objections as though fully set forth herein. Plaintiff
 20 further objects to this request to the extent that it seeks information
 21 neither relevant to the subject matter of this litigation nor reasonably
 22 calculated to lead to the discovery of admissible evidence. Plaintiff
 23 further objects to this request on the ground that it is overbroad, unduly
 24 burdensome and oppressive. Plaintiff further objects to this request on
 25 the ground that it seeks the production of documents containing
 26 confidential, sensitive, proprietary, commercial, business and financial
 27 information. Plaintiff further objects to this request on the ground that
 28 it violates the right to privacy of a third party. Plaintiff further objects
 to this request to the extent that it seeks documents protected by
 attorney-client privilege or the work-product doctrine.

1 **REQUEST FOR PRODUCTION NO. 52:**

2 Any and all DOCUMENTS which refer, reflect or relate to any
 3 communications that YOU have had with Barry's Tickets, located in
 4 Los Angeles, California, regarding the possible sale of the Barry's
 5 Tickets business to YOU.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 52:**

7 Plaintiff incorporates by reference each and every one of the General
 8 Responses and Objections as though fully set forth herein. Plaintiff
 9 further objects to this request because it seeks information neither
 10 relevant to the subject matter of this litigation nor reasonably
 11 calculated to lead to the discovery of admissible evidence. Plaintiff
 12 further objects to this request on the ground that it lacks foundation.
 13 Plaintiff further objects to this request on the ground that it violates the
 14 right to privacy of a third party. Plaintiff further objects to this request
 15 on the grounds that it is premature, given Plaintiff's pending motion to
 16 dismiss Defendant's counterclaim

REQUEST FOR PRODUCTION NO. 53:

Any and all DOCUMENTS which refer, reflect or relate to any communications that YOU have had with Sea Coast Ticket Agency, Inc. located in Portsmouth, New Hampshire, regarding the possible sale of the Sea Coast Ticket Agency business to YOU.

RESPONSE TO REQUEST FOR PRODUCTION NO. 53:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it lacks foundation. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request on the grounds that it is premature, given Plaintiff's pending motion to dismiss Defendant's counterclaim.

REQUEST FOR PRODUCTION NO. 54:

Any and all DOCUMENTS which refer, reflect or relate to any communications that YOU have had with Total Travel and Tickets in Florida regarding the possible sale of the Total Travel and Tickets business to YOU.

RESPONSE TO REQUEST FOR PRODUCTION NO. 54:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it lacks foundation. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request on the grounds that it is premature, given Plaintiff's pending motion to dismiss Defendant's counterclaim.

REQUEST FOR PRODUCTION NO. 55:

Any and all DOCUMENTS which refer, reflect or relate to any communications that YOU have had with Admit One, located in New York, New York regarding the possible sale of the Admit One business to YOU.

RESPONSE TO REQUEST FOR PRODUCTION NO. 55:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it lacks foundation. Plaintiff further objects to this request on the ground that it violates the

1 right to privacy of a third party. Plaintiff further objects to this request
 2 on the grounds that it is premature, given Plaintiff's pending motion to
 3 dismiss Defendant's counterclaim.

4 **REQUEST FOR PRODUCTION NO. 56:**

5 Any and all DOCUMENTS which refer, reflect or relate to any
 6 communications that YOU have had with As Off Music regarding the
 7 possible sale of the As Off Music business to YOU.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

9 Plaintiff incorporates by reference each and every one of the General
 10 Responses and Objections as though fully set forth herein. Plaintiff
 11 further objects to this request because it seeks information neither
 12 relevant to the subject matter of this litigation nor reasonably
 13 calculated to lead to the discovery of admissible evidence. Plaintiff
 14 further objects to this request on the ground that it lacks foundation.
 15 Plaintiff further objects to this request on the ground that it violates the
 16 right to privacy of a third party. Plaintiff further objects to this request
 17 on the grounds that it is premature, given Plaintiff's pending motion to
 18 dismiss Defendant's counterclaim.

19 **REQUEST FOR PRODUCTION NO. 57:**

20 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 21 that YOU have sold to Barry's Tickets in Los Angeles, California from
 22 January 1, 2007 to present.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

24 Plaintiff incorporates by reference each and every one of the General
 25 Responses and Objections as though fully set forth herein. Plaintiff
 26 further objects to this request because it seeks information neither
 27 relevant to the subject matter of this litigation nor reasonably
 28 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request to the extent that it lacks foundation.
 Plaintiff further objects to this request on the ground that it violates the
 right to privacy of a third party. Plaintiff further objects to this request
 on the grounds that it is premature, given Plaintiff's pending motion to
 dismiss Defendant's counterclaim..

REQUEST FOR PRODUCTION NO. 58:

Any and all DOCUMENTS which refer, reflect or relate to any
 complementary tickets that YOU have given to Barry's Tickets in Los
 Angeles, California from January 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 58:

Plaintiff incorporates by reference each and every one of the General
 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request because it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff

1 further objects to this request to the extent that it lacks foundation.
 2 Plaintiff further objects to this request on the ground that it violates the
 3 right to privacy of a third party. Plaintiff further objects to this request
 4 on the grounds that it is premature, given Plaintiff's pending motion to
 5 dismiss Defendant's counterclaim.

6 **REQUEST FOR PRODUCTION NO. 59:**

7 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 8 that YOU have sold to Sea Coast Ticket Agency, located in
 9 Portsmouth, New Hampshire from January 1, 2007 to present.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 59:**

11 Plaintiff incorporates by reference each and every one of the General
 12 Responses and Objections as though fully set forth herein. Plaintiff
 13 further objects to this request because it seeks information neither
 14 relevant to the subject matter of this litigation nor reasonably
 15 calculated to lead to the discovery of admissible evidence. Plaintiff
 16 further objects to this request to the extent that it lacks foundation.
 17 Plaintiff further objects to this request on the ground that it violates the
 18 right to privacy of a third party. Plaintiff further objects to this request
 19 on the grounds that it is premature, given Plaintiff's pending motion to
 20 dismiss Defendant's counterclaim

21 **REQUEST FOR PRODUCTION NO. 60:**

22 Any and all DOCUMENTS which refer, reflect or relate to any
 23 complementary tickets that YOU have given to Sea Coast Ticket
 24 Agency, located in Portsmouth, New Hampshire from January 1, 2007
 25 to present.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60:**

27 Plaintiff incorporates by reference each and every one of the General
 28 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request because it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request to the extent that it lacks foundation.
 Plaintiff further objects to this request on the ground that it violates the
 right to privacy of a third party. Plaintiff further objects to this request
 on the grounds that it is premature, given Plaintiff's pending motion to
 dismiss Defendant's counterclaim.

29 **REQUEST FOR PRODUCTION NO. 61:**

30 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 31 that YOU have sold to Total Travel and Tickets, located in Florida,
 32 from January 1, 2007 to present.

33 **RESPONSE TO REQUEST FOR PRODUCTION NO. 61:**

34 Plaintiff incorporates by reference each and every one of the General
 35 Responses and Objections as though fully set forth herein. Plaintiff

1 further objects to this request because it seeks information neither
 2 relevant to the subject matter of this litigation nor reasonably
 3 calculated to lead to the discovery of admissible evidence. Plaintiff
 4 further objects to this request to the extent that it lacks foundation.
 5 Plaintiff further objects to this request on the ground that it violates the
 6 right to privacy of a third party. Plaintiff further objects to this request
 7 on the grounds that it is premature, given Plaintiff's pending motion to
 8 dismiss Defendant's counterclaim.

9 **REQUEST FOR PRODUCTION NO. 62:**

10 Any and all DOCUMENTS which refer, reflect or relate to any
 11 complementary tickets that YOU have given to Total Travel and
 12 Tickets, located in Florida from January 1, 2007 to present.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 62:**

14 Plaintiff incorporates by reference each and every one of the General
 15 Responses and Objections as though fully set forth herein. Plaintiff
 16 further objects to this request because it seeks information neither
 17 relevant to the subject matter of this litigation nor reasonably
 18 calculated to lead to the discovery of admissible evidence. Plaintiff
 19 further objects to this request to the extent that it lacks foundation.
 20 Plaintiff further objects to this request on the ground that it violates the
 21 right to privacy of a third party. Plaintiff further objects to this request
 22 on the grounds that it is premature, given Plaintiff's pending motion to
 23 dismiss Defendant's counterclaim.

24 **REQUEST FOR PRODUCTION NO. 63:**

25 Any and all DOCUMENTS which refer, reflect or relate to any tickets
 26 that YOU have sold to Admit One, located in New York, from
 27 January 1, 2007 to present.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 63:**

Plaintiff incorporates by reference each and every one of the General
 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request because it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request to the extent that it lacks foundation.
 Plaintiff further objects to this request on the ground that it violates the
 right to privacy of a third party. Plaintiff further objects to this request
 on the grounds that it is premature, given Plaintiff's pending motion to
 dismiss Defendant's counterclaim.

REQUEST FOR PRODUCTION NO. 64:

Any and all DOCUMENTS which refer, reflect or relate to any
 complementary tickets that YOU have given to Admit One, located in
 New York, from January 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 64:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request to the extent that it lacks foundation. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request on the grounds that it is premature, given Plaintiff's pending motion to dismiss Defendant's counterclaim.

REQUEST FOR PRODUCTION NO. 65:

Any and all DOCUMENTS which refer, reflect or relate to any tickets that YOU have sold to As Off Music from January 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 65:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request to the extent that it lacks foundation. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request on the grounds that it is premature, given Plaintiff's pending motion to dismiss Defendant's counterclaim.

REQUEST FOR PRODUCTION NO. 66:

Any and all DOCUMENTS which refer, reflect or relate to any complementary tickets that YOU have given to As Off Music from January 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 66:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request to the extent that it lacks foundation. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request on the grounds that it is premature, given Plaintiff's pending motion to dismiss Defendant's counterclaim.

1. RMG's Contentions and Points and Authorities.

Pursuant to FRCP 34(a)-(b), a party is obliged to produce all specified relevant and non-privileged documents or other things in its possession, custody and

1 control on the date and time specified in a Request for Production of Documents.

2 Ticketmaster claims in this lawsuit, that its “terms of use” prohibit
3 commercial use of its Web site. (First Amended Complaint ¶ 22). However, it has
4 come to RMG’s attention that Ticketmaster is, or has been in negotiations to
5 purchase the ticket agencies set forth in Requests 51 through 66, and has brought
6 this lawsuit in order to monopolize the secondary market for ticket sales. In fact,
7 RMG’s 10th Affirmative defense is “Plaintiff’s FAC, and each of its purported
8 claims fail, as this is a frivolous action as same has been brought solely to control
9 competition and violate antitrust laws.” Further, RMG’s 13th Affirmative Defense
10 is “the FAC, and each and every cause of action therein, is barred by the doctrine of
11 unclean hands.” Moreover, RMG’s Third Affirmative Defense is “Plaintiff’s FAC,
12 and each of its purported claims, is barred by the Doctrine of Waiver.”

13 **First**, if Ticketmaster is knowingly allowing the ticket agencies set forth in
14 Requests 51 to 66 to purchase tickets from its Web site, any documents showing
15 this would prove that it has consistently waived the terms of use provision
16 prohibiting users from using the Web site for commercial use.

17 **Second**, if Ticketmaster has tried to acquire these ticket agencies, that would
18 be evidence of its attempt to obtain a monopoly in the secondary market, which
19 would support RMG’s 10th and 13th Affirmative defenses.

20 **Third**, if Ticketmaster is providing “hard to come by” tickets to ticket
21 agencies, and not selling the same to the public, that fact alone would show that
22 Ticketmaster is injuring its own goodwill by expressly depriving the ticket buying
23 public of tickets, in order to placate companies which it intends on inquiring.

24 **2. TM’s Contentions and Points and Authorities.**

25 These requests clearly relate to RMG’s dismissed counterclaims. RMG has
26 not filed amended counterclaims, and even if it does, the Court has already
27 expressed skepticism that those counterclaims would survive another motion to
28 dismiss. (*See* 12(b)(6) Order, p. 9:15-19 (RMG’s counterclaim “facially

unsustainable”).) Thus, Ticketmaster should not be subjected to discovery that only relates to claims that are unlikely to survive. Insofar as RMG has asserted affirmative defenses that are based on the same legal theories that have failed as affirmative claims, those defenses provide no basis for the discovery requests either.²

Equally without merit is RMG’s half-baked speculation that these documents might show that Ticketmaster is either harming itself or waiving its own terms of use if Ticketmaster is selling tickets to certain ticket agencies. The issue in this case is whether RMG is assisting its customers to improperly access and navigate Ticketmaster’s website through the use of automated devices. Whether Ticketmaster sold tickets to certain ticket agencies has no relevance whatsoever to that issue. Moreover, there would be no “waiver” of Ticketmaster’s terms of use even if, in RMG’s hypothetical, ticket agencies bought tickets through Ticketmaster’s website, unless, at a minimum, Ticketmaster was aware that those agencies were violating the terms of use, Ticketmaster had the power to stop it, and Ticketmaster instead voluntarily relinquished any right to challenge it. There is no evidence whatsoever that that is occurring or has ever occurred.

3. Proposed Resolution During Conference Of Counsel.

a. RMG’S Proposed Resolution.

At conference of counsel, RMG proposed that Ticketmaster produce all documents responsive to request numbers 51 to 66, as all of same are relevant to its affirmative defenses. Counsel for RMG explained that said requests are not premature, as they are relevant to RMG’s affirmative defenses, numbers 10 and 13, for frivolous action in an attempt to violate anti-trust laws and unclean hands,

² Some of these affirmative defenses are also patently meritless. For example, RMG contends that one of its affirmative defense alleges that “this is a frivolous action.” To the contrary, the Court, in issuing an injunction against RMG, acknowledged that Ticketmaster is “highly likely to succeed” on its claims against RMG. (Injunction, p. 12:6-10, 18:2-8, 18:11-12, 20:2-7, 21:3-4, 23:4-5, 23:24-26, 25:8-10.)

1 which Ticketmaster has never moved to strike. Counsel for Ticketmaster did not
 2 state any position regarding these requests, other than to state that he had no
 3 authority to say anything other than Ticketmaster would not provide a supplemental
 4 response to these requests, and that this was an issue which needed to be resolved
 5 by the magistrate judge on a motion to compel.

6 **b. Ticketmaster's Proposed Resolution.**

7 At the mandatory conference of counsel, Ticketmaster's counsel stated that
 8 these requests were premature because the Court had not yet ruled on
 9 Ticketmaster's motion to dismiss RMG's counterclaims(it has since been granted).
 10 (Knight Decl., ¶ 13.) Counsel for RMG countered that even if its counterclaims
 11 were ultimately dismissed, RMG still asserted antitrust violations as an affirmative
 12 defense. (*Id.*) Ticketmaster's counsel responded that any affirmative defense
 13 predicated on antitrust violations would suffer the same infirmities as RMG's
 14 counterclaims, and thus the same basis for refusing to produce the requested
 15 documents would apply. (*Id.*)

16
 17 **F. TICKETMASTER'S REFUSAL TO PRODUCE ANY DOCUMENTS**
 18 **PURSUANT TO REQUEST NUMBERS 18-24, 32, 34-40, 44-45, 49-50.**

19 **REQUEST FOR PRODUCTION NO. 18:**

20 Any and all DOCUMENTS which refer, reflect or relate to any
 investigation that YOU have performed with respect to RMG
 Technologies, Inc., a Delaware corporation.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

22 Plaintiff incorporates by reference each and every one of the General
 23 Responses and Objections as though fully set forth herein. Plaintiff
 24 further objects to this request to the extent it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 25 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request on the ground that it is vague and
 26 ambiguous. Plaintiff further objects to this request on the ground that it
 is overbroad, unduly burdensome and oppressive. Plaintiff further
 27 objects to this request on the ground that it seeks the production of
 documents containing confidential, sensitive, proprietary, commercial,
 28 business and financial information. Plaintiff further objects to this
 request to the extent that it seeks documents protected by attorney-
 client privilege or the work-product doctrine.

1 Subject to and without waiving the foregoing objections, Plaintiff
 2 responds as follows: Plaintiff will make all relevant, non-privileged
 3 responsive documents available for inspection under mutually
 4 agreeable terms, following entry of a mutually agreeable protective
 5 order.

6 **REQUEST FOR PRODUCTION NO. 19:**

7 Any and all DOCUMENTS which refer, reflect or relate to RMG
 8 Technologies, Inc., a Delaware corporation.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

10 Plaintiff incorporates by reference each and every one of the General
 11 Responses and Objections as though fully set forth herein. Plaintiff
 12 further objects to this request to the extent that it seeks information
 13 neither relevant to the subject matter of this litigation nor reasonably
 14 calculated to lead to the discovery of admissible evidence. Plaintiff
 15 further objects to this request on the ground that it is vague and
 16 ambiguous. Plaintiff further objects to this request on the ground that it
 17 is overbroad, unduly burdensome and oppressive. Plaintiff further
 18 objects to this request on the ground that it seeks the production of
 19 documents containing confidential, sensitive, proprietary, commercial,
 20 business and financial information. Plaintiff further objects to this
 21 request to the extent that it seeks documents protected by attorney-
 22 client privilege or the work-product doctrine.

23 Subject to and without waiving the foregoing objections, Plaintiff
 24 responds as follows: Plaintiff will make all relevant, non-privileged
 25 responsive documents available for inspection under mutually
 26 agreeable terms, following entry of a mutually agreeable protective
 27 order.

28 **REQUEST FOR PRODUCTION NO. 20:**

Any and all DOCUMENTS which refer, reflect or relate to any
 communications between YOU and Chris Kovach.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Plaintiff incorporates by reference each and every one of the General
 Responses and Objections as though fully set forth herein. Plaintiff
 further objects to this request because it seeks information neither
 relevant to the subject matter of this litigation nor reasonably
 calculated to lead to the discovery of admissible evidence. Plaintiff
 further objects to this request on the ground that it is overbroad, unduly
 burdensome and oppressive. Plaintiff further objects to this request on
 the ground that it violates the right to privacy of a third party. Plaintiff
 further objects to this request to the extent that it seeks documents
 protected by attorney-client privilege or the work-product doctrine.
 Subject to and without waiving the foregoing objections, Plaintiff
 responds as follows: Plaintiff will make all relevant, non-privileged
 responsive documents available for inspection under mutually
 agreeable terms, following entry of a mutually agreeable protective
 order.

REQUEST FOR PRODUCTION NO. 21:

Any and all DOCUMENTS which refer, reflect or relate to the settlement agreement between YOU and Chris Kovach, as referenced in YOUR motion for preliminary injunction in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request to the extent it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NO. 22:

Any and all DOCUMENTS which refer, reflect or relate to any purchase of tickets that Chris Kovach or anyone on his behalf made on ticketmaster.com prior to May of 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine. Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NO. 23:

Any and all DOCUMENTS which refer, reflect or relate to any purchase of tickets that Chris Kovach or anyone on his behalf made on ticketmaster.com subsequent to May of 2007.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

REQUEST FOR PRODUCTION NO. 24:

Any and all DOCUMENTS which refer, reflect or relate to the first time YOU learned that RMG's devices were allegedly being used on ticketmaster.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is vague and ambiguous, including, but not limited to the phrase "RMG's devices." Plaintiff further objects to this request on the ground that it seeks production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine. Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NO. 32:

Any and all DOCUMENTS which refer, reflect or relate to any monies that YOU have spent on technological measures that YOU have taken to stop the use of spiders, robots, bots, automatic devices or automated processes on the ticketmaster.com website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is vague and

1 ambiguous, including but not limited to the phrase "refer, reflect or
 2 relate to any monies". Plaintiff further objects to this request on the
 3 ground that it is compound, overbroad, unduly burdensome and
 4 oppressive. Plaintiff further objects to this request on the ground that it
 5 seeks the production of documents containing confidential, sensitive,
 6 proprietary, commercial, business and financial information. Plaintiff
 7 further objects to this request to the extent that it seeks documents
 8 protected by attorney-client privilege or the work-product doctrine.
 9 Subject to and without waiving the foregoing objections, Plaintiff
 10 responds as follows: Plaintiff will make all relevant, non-privileged
 11 responsive documents available for inspection under mutually
 12 agreeable terms, following entry of a mutually agreeable protective
 13 order.

14 **REQUEST FOR PRODUCTION NO. 34:**

15 Any and all DOCUMENTS which refer, reflect or relate to any money
 16 that you have paid to any PERSON who YOU have employed, either
 17 as an employee or an independent contractor, in an attempt to stop the
 18 use of spiders, robots, bots, automated devices or automated processes
 19 on the ticketmaster.com website.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

21 Plaintiff incorporates by reference each and every one of the General
 22 Responses and Objections as though fully set forth herein. Plaintiff
 23 further objects to this request on the ground that it is vague and
 24 ambiguous, including but not limited to the phrases "refer, reflect or
 25 relate to any money" and "employed . . . in an attempt". Plaintiff
 26 further objects to this request to the extent that it lacks foundation.
 27 Plaintiff further objects to this request on the ground that it is
 28 compound, overbroad, unduly burdensome and oppressive. Plaintiff
 further objects to this request on the ground that it seeks the production
 of documents containing confidential, sensitive, proprietary,
 commercial, business and financial information. Plaintiff further
 objects to this request on the ground that it violates the right to privacy
 of a third party. Plaintiff further objects to this request to the extent
 that it seeks documents protected by attorney-client privilege or the
 work-product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff
 responds as follows: Plaintiff will make all relevant, non-privileged
 responsive documents available for inspection under mutually
 agreeable terms, following entry of a mutually agreeable protective
 order.

29 **REQUEST FOR PRODUCTION NUMBER THIRTY-FIVE**

30 Any and all DOCUMENTS which refer, reflect or relate to any
 31 complaints that any of YOUR CLIENTS have made to YOU regarding
 32 the use of spiders, robots, bots, automated devices or automated
 33 processes on the ticketmaster.com website.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request on the ground that it is vague and ambiguous, including but not limited to the term "complaints". Plaintiff further objects to this request on the ground that it is compound, overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable term, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NUMBER THIRTY-SIX

Any and all DOCUMENTS which refer, reflect or relate to any complaints that any of YOUR CLIENTS have made to YOU regarding YOUR inability to distribute tickets in a fair and equitable manner.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request on the ground that it is vague and ambiguous, including but not limited to the term "complaints". Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request to the extent that it lacks foundation. Plaintiff further objects to this request to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NUMBER THIRTY-SEVEN

Any and all DOCUMENTS which refer, reflect or relate to any complaints that any of YOUR CUSTOMERS have made to YOU

1 regarding YOUR inability to distribute tickets in a fair and equitable
2 manner.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

4 Plaintiff incorporates by reference each and every one of the General
5 Responses and Objections as though fully set forth herein. Plaintiff
6 further objects to this request on the ground that it is vague and
7 ambiguous, including but not limited to the term "complaints".
8 Plaintiff further objects to this request to the extent that it lacks
9 foundation. Plaintiff further objects to this request to the extent that it
10 seeks information neither relevant to the subject matter of this
11 litigation nor reasonably calculated to lead to the discovery of
12 admissible evidence. Plaintiff further objects to this request on the
13 ground that it is overbroad, unduly burdensome and oppressive.
14 Plaintiff further objects to this request on the ground that it seeks the
15 production of documents containing confidential, sensitive,
16 proprietary, commercial, business and financial information. Plaintiff
17 further objects to this request on the ground that it violates the right to
18 privacy of a third party. Plaintiff further objects to this request to the
19 extent that it seeks documents protected by attorney-client privilege or
20 the work-product doctrine.

21 Subject to and without waiving the foregoing objections, Plaintiff
22 responds as follows: Plaintiff will make all relevant, non-privileged
23 responsive documents available for inspection under mutually
24 agreeable terms, following entry of a mutually agreeable protective
25 order.

26 **REQUEST FOR PRODUCTION NO. THIRTY EIGHT**

27 Any and all DOCUMENTS which refer, reflect or relate to the number
28 of tickets available for retail sale for each concert on the "Hannah
Montana & Miley Cyrus: Best of Both Worlds Tour" from January 1,
2007 through February 2008.

29 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

30 Plaintiff incorporates by reference each and every one of the General
31 Responses and Objections as though fully set forth herein. Plaintiff
32 further objects to this request because it seeks information neither
33 relevant to the subject matter of this litigation nor reasonably
34 calculated to lead to the discovery of admissible evidence. Plaintiff
35 further objects to this request on the ground that it is vague and
36 ambiguous, including but not limited to the phrase "number of tickets
37 available for retail sale". Plaintiff further objects to this request on the
38 ground that it is compound, overbroad, unduly burdensome and
39 oppressive. Plaintiff further objects to this request on the ground that it
40 seeks the production of documents containing confidential, sensitive,
41 proprietary, commercial, business and financial information. Plaintiff
42 further objects to this request to the extent that it seeks documents
43 protected by attorney-client privilege or the work-product doctrine.
44 Subject to and without waiving the foregoing objections, Plaintiff
45 responds as follows: Plaintiff will make all relevant, non-privileged
46 responsive documents available for inspection under mutually

1 agreeable terms, following entry of a mutually agreeable protective
2 order.

3 **REQUEST FOR PRODUCTION NUMBER THIRTY-NINE**

4 Any and all DOCUMENTS which refer, reflect or relate to the number
5 of tickets available for retail sale to fan club members for each concert
6 on the "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour"
7 from January 1, 2007 through February 2008.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

9 Plaintiff incorporates by reference each and every one of the General
10 Responses and Objections as though fully set forth herein. Plaintiff
11 further objects to this request because it seeks information neither
12 relevant to the subject matter of this litigation nor reasonably
13 calculated to lead to the discovery of admissible evidence. Plaintiff
14 further objects to this request on the ground that it is vague and
15 ambiguous, including but not limited to the phrase "number of tickets
16 available for retail sale". Plaintiff further objects to this request on the
17 ground that it is compound, overbroad, unduly burdensome and
18 oppressive. Plaintiff further objects to this request on the ground that it
19 seeks the production of documents containing confidential, sensitive,
20 proprietary, commercial, business and financial information. Plaintiff
21 further objects to this request to the extent that it seeks documents
22 protected by attorney-client privilege or the work-product doctrine.
23 Subject to and without waiving the foregoing objections, Plaintiff
24 responds as follows: Plaintiff will make all relevant, non-privileged
25 responsive documents available for inspection under mutually
26 agreeable terms, following entry of a mutually agreeable protective
27 order.

28 **REQUEST FOR PRODUCTION NUMBER FORTY**

Any and all DOCUMENTS which refer, reflect or relate to the number
of tickets available for retail sale to the general public for each concert
on the "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour"
from January 1, 2007 through February 2008.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

Plaintiff incorporates by reference each and every one of the General
Responses and Objections as though fully set forth herein. Plaintiff
further objects to this request because it seeks information neither
relevant to the subject matter of this litigation nor reasonably
calculated to lead to the discovery of admissible evidence. Plaintiff
further objects to this request on the ground that it is vague and
ambiguous, including but not limited to the phrases "number of tickets
available for retail sale" and "general public". Plaintiff further objects
to this request on the ground that it is compound, overbroad, unduly
burdensome and oppressive. Plaintiff further objects to this request on
the ground that it seeks the production of documents containing
confidential, sensitive, proprietary, commercial, business and financial
information. Plaintiff further objects to this request to the extent that it
seeks documents protected by attorney-client privilege or the work-

product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NUMBER FORTY-FOUR

Any and all DOCUMENTS which refer, reflect or relate to all tickets to the "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour" which YOU sold on the auction portion of the ticketmaster.com website from January 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-

REQUEST FOR PRODUCTION NUMBER FORTY-FIVE

Any and all DOCUMENTS which refer, reflect or relate to the price of each ticket to the "Hannah Montana & Miley Cyrus: Best of Both Worlds Tour" which YOU sold on the auction portion of the ticketmaster.com website from January 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request because it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NUMBER FORTY-NINE

Any and all DOCUMENTS which refer, reflect or relate to any tickets purchased by or on behalf of Thomas J. Prior on the ticketmaster.com website from February 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

REQUEST FOR PRODUCTION NUMBER FIFTY

Any and all DOCUMENTS which refer, reflect or relate to any tickets purchased by or on behalf of Gary Charles Bonner on the ticketmaster.com website from February 1, 2007 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 50:

Plaintiff incorporates by reference each and every one of the General Responses and Objections as though fully set forth herein. Plaintiff further objects to this request to the extent that it seeks information neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the ground that it is overbroad, unduly burdensome and oppressive. Plaintiff further objects to this request on the ground that it seeks the production of documents containing confidential, sensitive, proprietary, commercial, business and financial information. Plaintiff further objects to this request on the ground that it violates the right to privacy of a third party. Plaintiff further objects to this request to the extent that it seeks documents protected by attorney-client privilege or the work-product doctrine.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff will make all relevant, non-privileged responsive documents available for inspection under mutually agreeable terms, following entry of a mutually agreeable protective order.

1 **1. RMG's Contentions and Points and Authorities.**

2 Pursuant to FRCP 34(b)(1)(B), a request for producing documents must
3 specify a reasonable time, place and manner for the inspection and for performing
4 the related acts. Pursuant to FRCP 34(b)(C), an objection to part of a request must
5 specify the part and permit inspection of the rest.

6 In this matter, Ticketmaster has withheld every document set forth in RMG's
7 request numbers 18-24, 32, 34-40, 44-45 and 49-50 pursuant to its objections,
8 pending the issuance of a protective order. However, it is clear from these requests,
9 that most of the information which would be responsive to the requests are not
10 confidential. These actions on behalf of Ticketmaster are grossly inappropriate.
11 Moreover, all relevant, non-privileged documents which are not confidential should
12 have been provided.

13 **2. TM's Contentions and Points and Authorities.**

14 Most of the documents responsive to these requests are confidential. As of
15 the filing of this joint statement, non-confidential documents responsive to these
16 requests have been produced. Ticketmaster is willing to produce additional
17 responsive documents following entry of a protective order.

18 **3. Proposed Resolution During Conference of Counsel.**

19 **a. RMG's Proposal.**

20 RMG'S counsel asked Ticketmaster's counsel if all documents responsive to
21 request numbers 18-24, 32, 34-40, 44-45 and 49-50 were confidential.
22 Ticketmaster's counsel stated that not all documents responsive to request numbers
23 18-24, 32, 34-40, 44-45 and 49-50 were confidential. RMG's counsel then
24 requested that Ticketmaster immediately produce the non-confidential documents
25 responsive to request numbers 18-24, 32, 34-40, 44-45 and 49-50, and produce the
26 "confidential" documents upon the resolution of the protective order issue.
27 Ticketmaster's counsel stated Ticketmaster would produce the non-confidential
28 materials, but that he would not "go out on a limb" and provide RMG's counsel

1 with any definite timeframe as to when that might be. He said he hoped it would be
2 accomplished in two to three weeks, notwithstanding the fact that pursuant to the
3 agreement of the parties these documents were due on January 29, 2008.

4 **b. Ticketmaster's proposal.**

5 Months ago, Ticketmaster sent RMG a proposed stipulated protective order,
6 to which RMG never responded. (Knight Decl., ¶ 5.) At the start of the mandatory
7 conference of counsel, Ticketmaster asked RMG if RMG had any comments to the
8 proposed order, because the lack of response was delaying the production of
9 documents. (Knight Decl., ¶ 8.) Counsel for RMG responded that RMG's
10 principals had become angered by the Court's adverse rulings in this matter and
11 were therefore unwilling to negotiate any protective order with Ticketmaster. (*Id.*)
12 RMG's counsel stated that he informed RMG's principals that Ticketmaster would
13 likely move—successfully—for a protective order, but they nevertheless would not
14 give him the authority to enter into a stipulated protective order with Ticketmaster.
15 (*Id.*)

16 Subsequently, RMG's counsel requested that Ticketmaster produce non-
17 confidential documents despite the lack of a protective order. (*Id.*, ¶ 14.)
18 Ticketmaster's counsel agreed, but informed RMG's counsel that Ticketmaster was
19 in the process of reviewing thousands of pages of documents and that additional
20 time would be needed before such documents could be produced. (*Id.*) Those
21 documents are now being produced.

1 Dated: ~~March~~ ^{Apr. 7} 1, 2008

Coggan & Tarlow


2
3 By:


David N. Tarlow
Attorneys for Defendant
RMG TECHNOLOGIES, INC.

4
5 Dated: ~~March~~ ^{April} 1, 2008

Manatt, Phelps & Phillips, LLP

6
7
8 By:

 / RK
Donald R. Brown
Attorneys for Plaintiff
TICKETMASTER L.L.C.